

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 04-4158**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JUAN GARCIA-AVALINO,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Durham. Frank W. Bullock, Jr., District Judge. (CR-03-370)

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Submitted: June 18, 2004

Decided: July 8, 2004

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Before WILKINSON, SHEDD, and DUNCAN, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Louis C. Allen, III, Federal Public Defender, Gregory Davis, Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Arnold L. Husser, Angela Hewlett Miller, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Juan Garcia-Avalino appeals his conviction and sentence for illegally reentering the United States without the permission of the United States Attorney General after having previously been deported subsequent to a felony conviction, in violation of 8 U.S.C. § 1326(a), (b)(1) (2000). Garcia-Avalino's attorney has filed a brief in accordance with Anders v. California, 386 U.S. 738 (1967), raising one issue but stating that, in his view, there are no meritorious grounds for appeal. Although notified of his right to do so, Garcia-Avalino has not filed a pro se supplemental brief. Finding no reversible error, we affirm.

In the Anders brief, counsel questions whether the district court erred in sentencing Garcia-Avalino to thirty months of imprisonment. We find that we have no authority to review the district court's decision to sentence Garcia-Avalino to thirty months because this sentence is within the guideline range and is below the statutory maximum sentence of ten years. See 8 U.S.C. § 1326(b)(1) (setting forth statutory maximum). Because Garcia-Avalino's sentence does not exceed the maximum allowed by the Sentencing Guidelines or statute, we will not review it on appeal. See United States v. Porter, 909 F.2d 789, 794 (4th Cir. 1990) (finding challenge to court's exercise of discretion in setting a sentence within a properly calculated guideline range not addressable on appeal).

In accordance with Anders, we have reviewed the entire record in this case and have found no meritorious issues for appeal. We therefore affirm Garcia-Avalino's conviction and sentence. This court requires that counsel inform his client, in writing, of his right to petition the Supreme Court of the United States for further review. If the client requests that a petition be filed, but counsel believes that such petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on the client. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED